IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of case

Jail Appeal No. 26/2002

Date of decision: 16.10.2004

For the approval of:

Hon'ble Mr. Justice J. C. S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting? Yes

- Whether the reporter be allowed to see the judgment? Yes

Dated- 16.10.2004

LSR

HIGH COURT OF UTTARANCHAL

AT NAINITAL

Jail Appeal No. 26/2002

Harsh Lal
S/o Guna Lal
R/o Village Darmoli
Patwari area Dewalkot
The. Karnprayag
Distt. Chamoli ……. Appellant

Versus

State of Uttaranchal …….Respondent

Ms. Seema Sirohi, Amicus Curiae for the appellant
Mr.A.Rub learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

Dated :-_ October 16 2004

1. This criminal Appeal has been preferred by the appellant Harsh Lal against the judgment and order dated 10.01.2002 passed by Sri. Inderjeet Mahrotra, the then Session Judge Chamoli in Session Trial No.16 of 1999 convicting and sentencing the appellant for the offence under section 306 IPC for 7 years R.I. and under section 498-A IPC for a period of 2 years R.I. Both the sentences were ordered to run concurrently.

2. The brief facts of the case are that the appellant and Smt. Jamuna Devi (Deceased) were married and the appellant used to harass regularly Smt. Jamuna Devi and she came several times to the house of his brother Shakti Lal (P.W.1) and she was sent back several times to her in laws after marriage. On 18.04.1999 in the night the

appellant burnt Smt. Jamuna Devi after sprinkling Kerosene Oil and she died. After three days when Shakti Lal came to know about the death of Jamuna Devi and he went to Gopeshwar to see her dead body of his sister. P.W. 2 Smt. Maheshwari Devi, the aunt, the wife of Shekhi Lal went to the matrimonial house of the deceased on the next day of the incident.

3. The matter was reported to the Naib Tehsildar, Garsaran on 24.04.1999 at 8.00 a.m. by Shakti Lal (P.W.1). on the basis of written report (Ex. ka 1), F.I.R. (Ka 9) was prepared. The Investigating Officer prepared Panchayatnama (Ex. Ka3), Photolash (Ex. Ka 4), Challanlash (Ex.ka5), Sample of Seal (Ex. Ka6), letter to C.M.O. (Ex. Ka 7) and Site Plan (Ex.ka 8).

4. The postmortem on the dead body of Jamuna Devi was conducted by Dr. S.K.Prasad (P.W.5) on 20.04.1999 at 1.00 p.m. The following ante mortem injuries were found on the dead body.

(i) 100% superficial burn present all over the body. Singeing of hair of head and eye brow present and blackening of skin present all over the body. Body get cooked. Limbs flexible, arms flexed and Fingers hooked like claws called pugilistic or fencing posture.

The cause of death in the opinion of the Doctor was asphyxia as a result of ante mortem burn injuries.

5. After completing the investigation the Investigating Officer submitted the charge sheet (Ex.ka 11).

6. Charge was framed against the appellant U/s 498-A and 302 I.P.C. Alternative charge was also

framed against the appellant U/s 306 I.P.C. The appellant pleaded not guilty to the charge and claimed trial.

7. The prosecution in support of its case examined P.W. 1 Shakti Lal who is the brother of the deceased and proved written report Ex. Ka 1, P.W.2 Smt. Maheshwari Devi is the aunt of the deceased. Smt. Chandani Devi PW3 is the step mother of the appellant. PW-4 Smt. Saradi Devi is the mother of the deceased. PW-5 Dr. S.K. Prasad conducted the autopsy on the dead body of the deceased and proved postmortem report (Ex. Ka-2) and PW-6 Bhagwati Prasad Mishra investigated the case and proved panchayatnama (Ex. Ka-3), photo lash (Ex. Ka-4), challan lash (Ex. Ka-5), sample of seal (Ex. Ka-6), letter to C.M.O. (Ex. Ka-7), site plan (Ex. Ka-8), G.D. entry (Ex. Ka-10) and charge-sheet (Ex. Ka-11).

8. In the statement u/s 313 Cr.P.C. the appellant stated that he has been falsely implicated in the case.

9. The learned Sessions Judge after appreciation of the evidence on record found the appellant guilty u/s 306 and 498 A I.P.C. and convicted and sentenced the appellant as above.

10. I have heard the learned counsel for the parties and perused the evidence on record.

11. Now I have to determine as to who is responsible for causing the injuries on the person of the deceased. It is a well-settled principle of law that in order to convict an accused for an offence U/s 304-B of IPC, the following essentials must be satisfied-

(a) The death of a woman must have been caused by burns or bodily injuries or otherwise than under normal circumstances.

(b) Such death must have occurred with in seven years of her marriage.

(c) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband.

(d) Such cruelty or harassment must be for, or, in connection with demand of dowry.

12. It is not disputed that the two ingredients mentioned above are satisfied. However, the learned counsel for the appellant vehemently argued that there was absolutely not evidence on record to suggest that the death of Smt. Jamna Devi was subjected to cruelty or harassment by the appellant soon before her death and that such cruelty or harassment was for or in connection with the demand of dowry. Now I will focus my attention in particular to the last three ingredients as indicated above.

13. The prosecution adduced the evidence of PW-1 Shakti Lal who has stated in his evidence that he is the brother of the deceased Smt. Jamna Devi. He lodged F.I.R. (Ex.Ka-1) at Patwari Patti on 24-04-1999 at 08:00 a.m. He has further stated in his evidence that Smt. Jamna Devi deceased was his younger sister. He marriage was solemnized with the appellant about 4 years ago. When she used to come to her parental house she always complained against the appellant that the appellant beat her and also complained that she had not brought dowry in the marriage. When his

sister came to his house one year ago. She complained that she was subjected to cruelty by the appellant and further complained that the appellant had illicit relation with the wife of Tillu Lal. He refused to go to her parental house. Ultimately the stepmother of the appellant came to his house and assured the mother and brother of the deceased that the appellant will not torture the deceased. On such assurance he went to the house of the appellant. On 18-04-1999 PW-1 Shakti Lal received an information that his sister Smt. Jamna Devi had died due to burn injuries and this information was communicated to him by Kalu Ram resident of village Darmodi. PW-1 Shakti Lal, PW-2 Smt. Maheshwari Devi, Shanti Devi also went to the matrimonial house on the next day of the incident and found the deceased dead. Thereafter he lodged the report on 24-04-1999 with the Nayab Tehsildar Gairsaran, in which it is mentioned that his sister Jamna Devi was subjected to cruelty and the appellant had set fire to his sister and she had died. Shakti Lal PW-1 has not made any averment in the F.I.R. with regard to demand to dowry. The F.I.R. is silent on that point. The only evidence that has come before the court is the statement of PW-1 Shakti Lal who has stated that her sister was subjected to cruelty with regard to demand of dowry during her stay at her in-laws house by the appellant. This fact was specifically put to the witness during his cross-examination as to why he has not mentioned the fact of demand of dowry in the F.I.R. He has stated that it is correct that he did not mention this fact in the F.I.R. PW-1 Shakti Lal

has stated in his evidence that when the deceased visited her house she disclosed that the appellant was not satisfied with the dowry and had been asking more money but admittedly in his statement u/s 161 Cr.P.C. recorded during the investigation PW 1 Shakti Lal did not utter even a single word against the appellant with regard to dowry. The evidence of PW-1 Shakti Lal is too vague and omni-bus to be relied upon on the point of demand of dowry.

14. The prosecution also adduced the evidence of Smt. Maheshwari Devi PW-2 who is the aunt of the deceased. She had stated in her evidence that the father of the deceased died about 10 or 12 years ago. She was maintaining the deceased Jamna Devi and Shakti Lal since then. She also arranged the marriage of Jamna Devi deceased with the appellant and she also gave the dowry according to their status. She has also stated that Jamna Devi came there twice to her after the marriage and she did not complain anything against the appellant. When she came for third time then she complained to her that she was subjected to cruelty by the appellant and she further complained that the appellant had illicit connection with the wife of Tillu Lal and Darshan Lala. Lastly she came to her parental house leaving the house of the appellant. The stepmother of the appellant came to her house and assured that the appellant will not do any *Marpeet* with the deceased and the deceased went with him. She had not stated in evidence that the deceased made any complaint to her with regard to demand of dowry by the appellant.

15. PW-4 Smt. Saradi Devi who is the mother of the deceased also narrated the above facts in her evidence. Both the witnesses had not stated anywhere in their evidence that the deceased complained to them that the appellant had demanded any dowry and as such she was subjected to cruelty. PW-3 Smt. Chandani Devi, stepmother of the appellant, also had not stated anything about the demand of dowry by the appellant. She had not stated in her evidence that she brought the deceased from the parental house on the assurance that the appellant will not commit any Marpeet with the deceased. She has only stated that on the date of incident she was sleeping in her room. When she came to know that Jamna Devi was burning then she went to her room and found that Jamna Devi had sustained burn injuries.

16. The evidence of PW-2 Smt. Maheshwari Devi, PW-3 Smt. Chandani Devi and PW-4 Smt. Sharadi Devi clearly reveal that there was no evidence of any dowry demand by the appellant and the deceased never complained to them with regard to dowry demand whereas the evidence of PW-1 Shakti Lal is concerned that is also no cogent and credible.

17. Thus, as seen from the evidence on record in my opinion the learned trial court committed manifest error in concluding that the appellant was guilty of the offence that the deceased Jamna Devi was subjected to cruelty or harassment by the appellant soon before her death for or in connection with the demand of dowry. It was not established and looking to the evidence and

circumstances cumulatively that the deceased was subjected to cruelty immediately before her death.

18. A conjoint reading or section 313 B of the Indian Evidence Act and 304 B I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances.' The expression 'soon before' is very relevant where S. 113-B of the Evidence Act and S. 304-B I.P.C. are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket for formula can be laid down as to what would constitute a period of soon before the occurrence. it would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of any offence of dowry death as well as for raising a presumption under S. 113-B of the Evidence Act. The expression 'soon before her heath' used in the substantive S. 304-B, I.P.C. and S. 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in S. 114 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a

man who is in the possession of goods 'soon after the theft.' Is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. 'The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

19. In **Sunil Bajaj v. State of Madhya Pradesh. AIR 2001 SC 3020: (2001 Cri. LJ 4700)** the Supreme Court has held that normally, in a criminal case accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, may be direct or circumstantial or both. But in case of an offence under Section 304-B, I.P.C. an exception is made by deeming provision as to nature of death as 'dowry death' and that the husband as his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence there is need for greater care and caution, that too having regard

to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the ingredients of the offence are proved by the prosecution."

20. In the instant case the ingredients indicated under section 304 B IPC have not been established. As such the provisions of 113 B of the Evidence Act would not be attracted. The presumption can only be taken when the ingredients as indicated above under Section 304 B IPC are established by the prosecution. Even there is no evidence on record to sustain the conviction under section 498 A IPC.

21. In view of the above discussion I find that the learned Session Judge has erred in holding that the appellant is guilty of the offence U/S 306 and 498 A IPC. The appeal succeeds and is liable to be allowed.

22. The appeal is allowed. The conviction and sentence awarded by the trial court against the appellant U/S 306 and 498 A IPC per judgment and order dated 10-01-2002 are set aside. The appellant is acquitted of the charges levelled against him under sections 498 A, 302 and 306 IPC. The appellant is in jail. He shall be set at liberty forthwith if not wanted in any other case.

23. Let the copy of this judgment alongwith the record of the case be sent to the court concerned for needful compliance under intimation to this court with two months positively.

(J.C.S.RAWAT, J.)

October 16, 2004